

Decision No. R12-0417

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO**

DOCKET NO. 11A-938T

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IN THE MATTER OF THE APPLICATION OF NUCLA-NATURITA TELEPHONE  
COMPANY AND NNTC WIRELESS, LLC FOR REDEFINITION OF SERVICE AREA  
PURSUANT TO COMMISSION DECISION NO.C11-0551.

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**RECOMMENDED DECISION OF  
ADMINISTRATIVE LAW JUDGE  
G. HARRIS ADAMS  
GRANTING APPLICATION AND STIPULATION**

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Mailed Date: April 20, 2012

**TABLE OF CONTENTS**

I. STATEMENT.....	1
II. FINDINGS AND CONCLUSIONS.....	2
A. Background and Application.....	2
B. Stipulation and Settlement Agreement.....	7
C. Conclusions .....	10
III. <u>ORDER</u> .....	12
A. The Commission Orders That: .....	12

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**I. STATEMENT**

1. On November 17, 2011, Nucla-Naturita Telephone Company (Nucla) and NNTC Wireless, LLC (NNTC) (collectively, the Companies or the Applicants) filed their Application for Redefinition of Service Area Pursuant to Commission Decision No. C11-0551 (Application). The Applicants also filed the Direct Testimonies and Exhibits of John D. Loe and Kent Tomlinson in support of the Application.

2. The matter was referred to an Administrative Law Judge for resolution by minute entry during the Commission's Weekly Meeting held January 4, 2012.

3. The Colorado Office of Consumer Counsel (OCC) and Staff of the Public Utilities Commission (Staff) timely intervened of right. The parties to this proceeding are Nucla, NNTC, the OCC, and Staff.

4. By Decision No. R12-0051-I, issued January 13, 2012, a hearing was scheduled to commence in this matter on April 3, 2012.

5. On March 14, 2012, a Stipulation and Settlement Agreement (Stipulation) was filed on behalf of all parties that, if approved, resolve issues raised in this matter.

6. By Decision No. R12-0301-I, issued March 20, 2012, the undersigned determined that a hearing was not required, and consideration of pending matters would be undertaken and ruled upon by separate order.

7. In accordance with, and pursuant to, § 40-6-109, C.R.S., the Administrative Law Judge transmits to the Commission the record and exhibits of the proceeding together with a written recommended decision.

## **II. FINDINGS AND CONCLUSIONS**

### **A. Background and Application**

8. Under the provisions of Title 47 of the *Code of Federal Regulations* (CFR), Part 54, § 54.315, all rural incumbent local exchange carriers (RILECs) for which high cost universal support is provided pursuant to 47 CFR §§ 54.301, 54.303, and/or 54.305 of subpart B and subpart K of Part 54, and/or subpart F of Part 36, of Chapter 1 of the CFR, must select a path for the disaggregation and targeting of support received by such rural incumbent local exchange

carriers. Three alternative disaggregation path choices are described in § 54.315: Path One,<sup>1</sup> Path Two,<sup>2</sup> and Path Three.<sup>3</sup>

9. Commission Rules Regulating Telecommunications Providers, Services, and Products, 4 *Code of Colorado Regulations* (CCR) 723-2-2190 requires that a rural incumbent local exchange carrier that selects a disaggregation path pursuant to Federal Communications Commission (FCC) regulations to file its disaggregation path selection with the Commission as required by paragraphs (a), (b), or (c) of that rule.

10. Commission Rule 4 CCR 723-2-2848(b) requires that the disaggregation and targeting of the Colorado High Cost Support Mechanism (CHCSM) by RILECs shall be the same plan as the provider selected under Rule 2190.

11. Nucla is an RLEC, as defined in 47 CFR § 54.5; is an Incumbent Local Exchange Carrier (ILEC) as defined in 4 CCR 723-2-2001(ss); and is a Rural Telecommunications Provider, as defined in Rule 4 CCR 723-2-2001(gggg). Nucla provides telecommunications and other services in Study Area Code 462193.

12. NNTC is a subsidiary of Nucla and is licensed to provide cellular mobile telecommunications and Personal Communications Services in portions of Colorado by the FCC.

13. The Commission designated NNTC as an Eligible Telecommunications Carrier (ETC) and an Eligible Provider (EP) in the Norwood exchange in Docket No. 08A-508T. This matter was assigned to an Administrative Law Judge (ALJ) who, in Decision No. R11-0218,

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<sup>1</sup> Path One, a rural incumbent local exchange carrier (ILEC) chooses not to disaggregate.

<sup>2</sup> Path Two, a rural ILEC elects to disaggregate based on a plan for which the carrier obtains prior approval from the appropriate regulatory authority.

<sup>3</sup> Path Three, a rural ILEC elects to disaggregate and to self-certify the disaggregation and targeting plan which the carrier has adopted. The plan becomes effective on the date the carrier self-certifies its plan to the state regulatory commission.

Docket No. 08A-508T, issued March 1, 2011, conditioned NNTC's ETC/EP designation on both the disaggregation and redefinition of the Naturita, Nucla, and Paradox exchanges. However, the Commission's order on exceptions, Decision No. C11-0551, Docket No. 08A-508T, issued May 23, 2011, deferred resolution of the issue of disaggregation until a subsequent proceeding. The relevant paragraphs of Decision No. C11-0551 state:

19. We agree with NNTC that a disaggregation condition would not be appropriate in this docket. It is true that no party presented evidence or arguments on this issue. Regardless of whether NNTC, as the applicant, should have done so, there is little, if any, record in this case on whether disaggregation or redefinition is appropriate. Regardless of whether, in the abstract, this issue is better addressed at the ETC/EP designation stage or in a subsequent proceeding, we will defer resolution of this issue until a subsequent proceeding because of the state of the record in this docket. We therefore grant the exceptions filed by NNTC. ...

20. We note that, when NNTC applies for actual receipt of high cost support, NNTC and/or Nucla-Naturita should file supporting testimony and exhibits addressing both redefinition and disaggregation options. We express no opinion, at this time, on whether either or both are warranted. Rather, the Commission will comprehensively examine this issue when NNTC files for actual receipt of support. The Commission will consider the unique circumstances of this case, specifically the parent-subsidiary relationship between the competitive wireless carrier and the underlying ILEC, in rendering its decision.

14. In response to the OCC's Request for Rehearing Reargument, and Reconsideration (RRR) of Decision No. C11-0551, the Commission denied the OCC's RRR, but made the following clarification in Decision No. C11-0757, Docket No. 08A-508T, issued July 13, 2011:

[We] agree with the OCC that a clarification is needed in the language of Decision No. C11-0551 regarding the process of granting ETC status to NNTC. Specifically, a clarification is needed regarding the condition of ETC designation based on the redefinition of Nucla-Naturita's study area to the wire center (or exchange) level and the concurrence of the Federal Communications Commission (FCC) in that redefinition.

We find that, in order to address the possibility of creamskimming, Nucla-Naturita must redefine its study area for NNTC to provide service to fewer than all of Nucla-Naturita's wire centers. Nucla-Naturita must make a

verified filing with the Commission, as the affected rural ILEC. The filing is necessary: (a) to obtain Commission permission to target federal high-cost support (Rules Regulating Telecommunications Providers, Services, and Products, 4 *Code of Colorado Regulations* (CCR) 723-2-2190(d)); and (b) to obtain a Commission decision that addresses, *inter alia*, any Federal-State Joint Board recommendations concerning redefinition of a rural ILEC's service area (47 *Code of Federal Regulations* (CFR) § 54.207(c)(1)(ii)). Nucla-Naturita may make its filing under Rule 4 CCR 723-2-2190(b) (Path 2) or Rule 4 CCR 723-2-2190(c) (Path 3). The filing must include information that provides an evidentiary basis for a Commission decision or an explanation that satisfies the requirements of 47 CFR § 54.207(c)(1). [Footnote omitted].

Nucla-Naturita is not a party to this proceeding. Thus, while the redefinition of Nucla-Naturita's study area is a condition on NNTC's ETC designation in Nucla-Naturita's service area in this proceeding, the Commission cannot order Nucla-Naturita to make a filing to redefine its study area as well as address the sub-issue of whether disaggregation of its service/study area is appropriate. Despite this fact, NNTC's designation as an ETC in Nucla-Naturita's wire centers will be subject to the condition that Nucla-Naturita's study area must be redefined pursuant to 47 CFR § 54.207. [Footnote omitted].

We condition NNTC's ETC designation of the redefinition of Nucla-Naturita's study area to the wire center (or exchange) level and the FCC's concurrence in that redefinition. In addition, NNTC must provide, as a compliance filing, a copy of the FCC's decision that concurs with the Commission's redefinition of Nucla-Naturita's service area. If all other requirements have been met and Nucla-Naturita's study area is disaggregated and redefined to the wire center level,<sup>4</sup> NNTC's ETC designation in the redefined Nucla-Naturita service areas will become effective immediately upon the filing of the compliance filing.

If the Commission decides to redefine (with or without disaggregation) Nucla-Naturita's study area, the Commission (or another party) must file with the FCC for the FCC's agreement to the redefinition of the study area.

C11-0757 ¶¶ 12-16.

15. On November 17, 2011, the Companies filed with the Commission an application to redefine Nucla's service area to the wire center level, arguing that disaggregation was unnecessary.

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<sup>4</sup> The original Decision No. C11-0757 stated, "If all other requirements have been met and Nucla-Naturita's study area is *disaggregated and* redefined to the wire center level..." (emphasis added) C11-0757 ¶ 15. However, on July 14, 2011, the Commission issued an errata, Decision No. C11-0757-E, which removed the words "disaggregated and..." in this sentence.

16. On November 18, 2011, the FCC released the ICC/USF Reform Order that reforms the universal service support system and transitions the system to the Connect America Fund (CAF).<sup>5</sup> This ICC/USF Reform Order (also known as CAF Order) eliminated the identical support rule contained in 47 CFR § 54.307(a)(1) and froze each competitive ETC's support received as of December 31, 2011, but did allow for legacy identical support to continue over a certain period, decreasing the legacy amounts recoverable by 20 percent per year. The ICC/USF Reform Order concluded that the legacy high-cost support received by competitive eligible telecommunications carriers (CETCs) for 2011 or an amount equal to \$3,000 times the number of reported lines for 2011, whichever is lower, should be used to set their baseline level of support for the phase-down transition, starting in 2012. On December 29, 2011, T-Mobile USA, Inc. (T-Mobile) filed a Petition for Reconsideration or Clarification (the T-Mobile PFR) asking the Commission to clarify the level of high-cost universal service fund (USF) support CETCs are to receive during the phase-down of high-cost support for CETCs established in the ICC/USF Reform Order. The T-Mobile PFR asks for the following relief:

In the case of a carrier granted ETC status in 2011 that received support for part of 2011, the total amount of support received for 2011 should be divided by the number of months for which it received support in 2011, rather than by 12, in order to calculate the "monthly baseline support amount." In the case of a carrier that filed an ETC application prior to adoption of the *CAF Order* that is granted too late to receive support for 2011, the "monthly baseline support amount" should be equal to the average monthly amount of high-cost support that the carrier would have received for 2011 if it had been designated an ETC and received support for 2011 under the prior rules.

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<sup>5</sup> See *In the Matter of Connect America Fund, A National Broadband Plan for Our Future, Establishing Just and Reasonable Rate for Local Exchange Carriers, High-Cost Universal Service Support, Developing an Unified Intercarrier Compensation Regime, Federal-State Joint Board on Universal Service, Lifeline and Link-Up, Universal Service Reform – Mobility Fund*, WC Docket 10-90, GN Docket No. 09-51, WC Docket No. 0-7-135, WC Docket No. 05-337, CC Docket No. 01-92, CC Docket No. 96-45, WC Docket 03-109, WT Docket No. 10-208, Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161 (rel. Nov. 18, 2011) (ICC/USF Reform Order or CAF Order).

See T-Mobile PFR at p.13. If the T-Mobile PFR is granted, NNTC would continue to be eligible for legacy USF funding even though it did not receive funding in 2011. For those carriers that seek ETC status for support other than legacy USF funding, the FCC recently ruled that disaggregation is no longer a requirement. See CAF Docket, *Report and Order and Further Notice of Proposed Rulemaking*, FCC 12-147 at ¶ 16 (rel. Feb. 3, 2012), which provides:

*Elimination of Section 54.315 (Disaggregation).* Section 54.315 of the Commission's rules permits incumbent local exchange carriers to target the high-cost universal service support they receive to specific areas within their study areas based on the relative costs of serving those areas. This disaggregation of support was intended to ensure that competitive ETCs receive an appropriate per-line support amount for the various areas within the incumbent study area, rather than a single, undifferentiated per-line support amount for the entire study area. Because the Commission eliminated the identical support rule in the *USF/ICC Transformation Order* and competitive ETCs therefore no longer receive support based on incumbent support amounts, the Commission's disaggregation rule is now obsolete. Because this rule is obsolete, we find good cause to delete it without notice and comment. [Footnotes omitted].

17. As noted above, the Companies, the OCC, and Staff (the Parties) have now reached agreement on the issues raised in this docket, as reflected in the Stipulation. The Stipulation, including its Exhibit A, is attached to this Order.

#### **B. Stipulation and Settlement Agreement**

18. The Parties have agreed that, pursuant to the terms of this Stipulation, Nucla's Study Area should be redefined at the exchange level. The exchange levels are: Nucla, Naturita, Paradox, Arrowhead, and Gateway.

19. The Parties understand that the FCC's ICC/USF Reform Order froze USF support to competitive ETCs receiving support as of December 31, 2011, and that competitive ETCs designated after that date will not be eligible for identical support unless the T-Mobile PFR is granted. While disaggregation is no longer required by the FCC for carriers seeking non-legacy support from the USF, Nucla will go forward with disaggregation in the hope that the

T-Mobile PFR is granted and NNTC may thereby seek legacy USF funding. However, pursuant to the Stipulation and Commission Rule 4 CCR 723-2-2848(b), the Companies have agreed to the disaggregation and targeting of Colorado High Cost support at the exchange level.

20. The Parties have agreed that, pursuant to the terms of this Stipulation, disaggregation will occur. The Parties have agreed to use the Path Two Disaggregation Plan, as contained in Exhibit A to the Stipulation, on an exchange basis. The Parties have agreed to use Staff's method of direct assignment of investment for Central Office, Transmission, and Cable and Wire Facilities for each exchange. The Parties have agreed to use Staff's methodology for calculation of accumulated depreciation.

21. To determine the intrastate disaggregated high cost funding, the net plant by exchange was used to allocate the high cost funds to each exchange. The methodology is incorporated in Exhibit A to the Stipulation.

22. The agreed upon Path Two Disaggregation Plan consists of the following elements: 1) redefinition of Nucla's study area into five exchanges; 2) direct assignment of investment for each exchange; and 3) Staff's methodology to calculate accumulated depreciation reserve in each exchange. The result provides a percentage that is used to allocate appropriate amounts of support per line in each exchange based upon the Parties' agreed upon methodology. Exhibit A outlines the total amount of CHCSM support provided by the agreed upon Path Two Disaggregation Plan. The CHCSM support amount equates to the approved support amount in Recommended Decision No. R10-1281, Docket No. 10M-487T issued November 24, 2010. However, should Nucla's eligibility change, the new CHCSM support amount will be allocated using the percentages contained in Exhibit A.



23. The agreed upon Path Two Disaggregation Plan and the associated calculation methodology meet the requirements of 47 CFR §§ 54.315(c) and (e) as well as Commission Rule 4 CCR 723-2-2190(b), as outlined below.

24. The Path Two Disaggregation Plan was developed in accordance with the following assumptions: 1) Nucla's study area consists of approximately 2,581 square miles; and 2) Nucla had approximately 1,546 access lines in 2010.

25. The Parties have agreed to use Nucla's relevant Continuous Property Records and other data to directly assign the Central Office, Transmission and the Cable, and Wire Facilities' investment to each exchange.

26. The Parties have agreed to directly apply the Commission-approved depreciation life percentages to each type of investment for each exchange.

27. The Parties have agreed to calculate the accumulated depreciation on the direct investment in each exchange.

28. The Parties have agreed that the Stipulation and the disaggregation plan address "cream-skimming" concerns, if any.

29. Upon Commission approval of the Stipulation, NNTC's filing of line counts with the Commission, and FCC approval of Nucla's redefinition to the exchange level, the Parties have agreed that, pursuant to the Commission's Rules Regulating Telecommunications Carriers, NNTC will be eligible for funding from the state CHCSM without any further applications or petitions to the Commission.<sup>6</sup>

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<sup>6</sup> See 47 CFR § 54.207; 4 CCR 723-2-2191(a); and 4 CCR 723-2-2848(a).

30. Within 30 days after final Commission approval of the Stipulation, the Commission on the Companies' behalf, will file with the FCC for the FCC's agreement to the redefinition of the study area. Upon the FCC's agreement to the redefinition of the study area (by order or by operation of law), the parties have agreed that NNTC will be an ETC for all purposes and for all of the exchanges for which it sought ETC status in Docket No. 08A-508T, and will not be required to file any further applications or petitions for such ETC status, unless required by the FCC or this Commission.

31. The Parties have agreed that the Stipulation is a settlement of disputed and compromised claims and accordingly, was made for settlement purposes only. No Party concedes the validity or correctness of any regulatory principle or methodology directly or indirectly incorporated in the Stipulation. No precedential effect or other significance, except as may be necessary to enforce the Stipulation or a Commission order concerning this Stipulation, shall be attached to any principle or methodology contained in the Stipulation.

### **C. Conclusions**

32. Based on the record in this proceeding, including the testimony, exhibits, and Stipulation, the ALJ finds that the public interest and necessity support approval of the Stipulation filed by the Parties. The terms of the Stipulation are found to be just, reasonable, in the public interest, and a reasonable resolution of all issues which were or could have been contested by the Parties.

33. Nucla's Study Area shall be redefined at the exchange level. The Parties' agree that the Path Two Disaggregation Plan and the associated calculation methodology meet the requirements of 47 CFR §§ 54.315(c) and (e) as well as Commission Rule 4 CCR 723-2-2190(b).

34. The Stipulation and the disaggregation plan address “cream-skimming” concerns identified in Docket No. 08A-508T or otherwise.

35. Upon NNTC’s filing of line counts with the Commission and after FCC approval of Nucla’s redefinition of the study area, NNTC will be eligible for funding from the state CHCSM without any further applications or petitions to the Commission.

36. Within 30 days after final Commission approval of the Stipulation, the Commission on the Companies’ behalf will file with the FCC for the FCC’s agreement to the redefinition of the study area. NNTC will provide its assistance as needed to the Commission and its Staff to help draft such filing.

37. Upon the FCC’s agreement to the redefinition of the study area (by order or by operation of law), NNTC will be an ETC for all purposes and for all of the exchanges for which it sought ETC status in Docket No. 08A-508T, and will not be required to file any further applications or petitions for such ETC status, unless required by the FCC or this Commission.

38. The Commission’s conditions placed upon NNTC’s designation as an ETC and an EP in Docket No. 08A-508T are satisfied pursuant to the terms of the Stipulation and this Order.

39. No precedential effect or other significance, except as may be necessary to enforce the Stipulation or a Commission order concerning this Stipulation, shall be attached to any principle or methodology contained in the Stipulation.

40. In accordance with § 40-6-109, C.R.S., it is recommended that the Commission enter the following order.

### **III. ORDER**

#### **A. The Commission Orders That:**

1. The Stipulation and Settlement Agreement (Stipulation) entered into between Nucla-Naturita Telephone Company (Nucla); NNTC Wireless, LLC (NNTC); Staff of the Commission (Staff); and the Colorado Office of Consumer Counsel is approved.

2. Upon NNTC's filing of line counts with the Commission, and after Federal Communications Commission (FCC) approval of Nucla's redefinition of the study area, NNTC will be eligible for funding from the state Colorado High Cost Support Mechanism without any further applications or petitions to the Commission.

3. Within 30 days after final Commission approval of the Stipulation, the Commission on Nucla and NNTC's behalf will file with the FCC for the FCC's agreement to the redefinition of the study area. NNTC will provide its assistance as needed to the Commission and its Staff to help draft such filing.

4. Upon the FCC's agreement to the redefinition of the study area (by order or by operation of law), NNTC will be an Eligible Telecommunications Carrier (ETC) for all purposes and for all of the exchanges for which it sought ETC status in Docket No. 08A-508T, and will not be required to file any further applications or petitions for such ETC status, unless required by the FCC or this Commission.

5. The Commission's conditions placed upon NNTC's designation as an ETC and an Eligible Provider in Docket No. 08A-508T are satisfied pursuant to the terms of the Stipulation and this Order.

Before the Public Utilities Commission of the State of Colorado

Decision No. R12-0417

DOCKET NO. 11A-938T

6. This Recommended Decision shall be effective on the day it becomes the Decision of the Commission, if that is the case, and is entered as of the date above.

7. As provided by § 40-6-106, C.R.S., copies of this Recommended Decision shall be served upon the parties, who may file exceptions to it.

a) If no exceptions are filed within 20 days after service or within any extended period of time authorized, or unless the recommended decision is stayed by the Commission upon its own motion, the recommended decision shall become the decision of the Commission and subject to the provisions of § 40-6-114, C.R.S.

b) If a party seeks to amend, modify, annul, or reverse a basic finding of fact in its exceptions, that party must request and pay for a transcript to be filed, or the parties may stipulate to portions of the transcript according to the procedure stated in § 40-6-113, C.R.S. If no transcript or stipulation is filed, the Commission is bound by the facts set out by the administrative law judge; and the parties cannot challenge these facts. This will limit what the Commission can review if exceptions are filed.

Before the Public Utilities Commission of the State of Colorado

Decision No. R12-0417

DOCKET NO. 11A-938T

8. If exceptions to this Recommended Decision are filed, they shall not exceed 30 pages in length, unless the Commission for good cause shown permits this limit to be exceeded.

(S E A L)



THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF COLORADO

G. HARRIS ADAMS

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Administrative Law Judge

ATTEST: A TRUE COPY

A handwritten signature in cursive script that reads "Doug Dean".

Doug Dean,  
Director